

REMARKS

Claims 51-80 remain pending in this application. Claims 51, 61, and 71 are amended.¹ In the Final Office Action mailed June 30, 2008, the Examiner took the following action²:

- rejected claims 51-80 under 35 U.S.C. §103(a) as being unpatentable over Odom et al (U.S. Patent No. 6,058,379, "Odom") in view of Purcell (U.S. Patent No. 6,081,789, "Purcell")

This rejection was adhered to in the Advisory Action mailed August 22, 2008. Applicant respectfully traverses the rejection of claims 51-80 under 35 U.S.C. §103(a). The claims, as amended, are unobvious over the art of record.

"[T]he framework for objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art." M.P.E.P. § 2141(II). "The key to supporting any rejection under 35 U.S.C. §103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." M.P.E.P. § 2141(III). "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(III). In the Office Action, "there must

¹ Claims were amended solely to expedite prosecution. Applicant preserves the right to pursue any originally disclosed subject matter in subsequent applications.

² The Office Action contains a number of statements reflecting characterizations of the related art and claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

be “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” M.P.E.P. § 2141(III).

The differences between the claimed invention and the prior art have not been properly ascertained, and no rational underpinning to support the legal conclusion of obviousness has been provided. Accordingly, no reason has been clearly articulated as to why the prior art would have rendered the claimed invention obvious to one of ordinary skill in the art. Thus, the rejections should be withdrawn.

Claims 51, 61, and 71

In Applicant's Amendment and Response filed on April 4, 2008, Applicant explained that the present invention involves a reversal of roles as compared to auctions described in the prior art. See Amendment at p. 13-14. In a traditional auction (as *Odom* describes), buyers submit bids with proposed prices for an item sold by a seller, bidding up the price, and the best bid wins the auction. Multiple buyers may submit bids to the seller for the same item. On the other hand, in the claimed invention, sellers submit monetary bid offers to a buyer based on the buyer's requirements. Through this process, bid offers from multiple sellers allow the buyer to select the best one.

Thus, the Examiner correctly noted in the “Response to Arguments” section of the June 30, 2008 Office Action that Applicant “asserts that *Odom* reverses the roles of buyer and seller.” The Examiner noted this “role reversal” distinction, but argued that the claims did not necessarily reflect that distinction, and that the Examiner's current understanding of the claims was consistent with the prior art.

To ensure that the claims clearly reflect Applicant's "role reversal" distinction, Applicant has amended independent claims 51, 61, and 71. Amended claims 61 and 71 recite similar elements as claim 51, although they differ in scope from claim 51 and from each other. As amended, these claims specify that buyer bids do not include a proposed price, whereas seller bid offers do include a proposed price. Thus, in the set of interactions that establish the proposed agreement, sellers propose prices and buyers do not. This set of interactions that establish the proposed agreement occur before the negotiations that may occur between the buyer and selected seller in the forum provided by the framework.

Neither *Odom* nor *Purcell* teaches these aspects of establishing a proposed agreement. The primary reference, *Odom*, does not teach that buyer "bids do not include a proposed price," and does not teach that seller "bid offers do include a proposed price." Indeed, in the claimed invention, sellers submit bid offers that propose prices based on a buyer bid that does not include a proposed price. *Odom* does not teach that a buyer can then "review the bid offers" and "select[] a bid offer offered by one of the plurality of sellers." In fact, the opposite is true in *Odom*. There, buyers submit bids that contain proposed prices based on the product information displayed by the seller, and then the seller may select a best bid from a set of interested buyers. See, e.g., *Odom* at col. 6 lines 28-45.

In prior correspondence, including the Office Action mailed June 30, 2008, the Examiner has pointed to *Odom*'s teaching that "[n]ew 'best' bids may be broadcast to all participants" as meeting the claim limitations of "receiving bid offers within the framework from the sellers in response to the bids," and "displaying the bid offers to the

buyer within the framework to enable the buyer to review the bid offers." Office Action

at 3. For many reasons, Applicant does not agree with the Examiner as to whether simply notifying participants of a new best bid is similar to displaying a seller's bid offer to buyers. For instance, if the best bid has already been submitted by an interested buyer, the seller would not seek the same bid again. However, even though Applicant and Examiner disagree on this point, the amended claims resolve this issue beyond question. *Odom's* teaching to broadcast the "best" bid from among the buyers is incompatible with the claims. In the claimed invention, one buyer's bid is not compared to any other buyer's bid. Instead, it is sellers' bid offers that are compared to each other to determine which is best.

In light of the amendments to claims 51, 61, and 71, detailed above, the Office Action has neither properly ascertained the differences between the claimed invention and the prior art, nor has it provided a rational underpinning to support the legal conclusion of obviousness regarding claims 51, 61, and 71. Thus, there is no clearly articulated reason why claims 51, 61, and 71 would have been obvious to one of ordinary skill in the art in view of the applied prior art. Accordingly, the rejection of claims 51, 61, and 71 under 35 U.S.C. §103(a) should be withdrawn.

Claims 52-60, 62-70, and 72-80

Because claims 52-60, 62-70, and 72-80 depend either directly or indirectly from allowable claims 51, 61, and 71, respectively, each dependent claim is also allowable. Accordingly, the rejection of claims 52-60, 62-70, and 72-80 under 35 U.S.C. §103(a) should be withdrawn.

In view of the foregoing remarks, Applicant submits that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By: 

Joan S. Sieman
Reg. No. 61,064
Phone: 202-408-4000
Fax: 202-408-4400